IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2953 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

UNION OF INDIA

Versus

BABUBHAI LALJIBHAI MAKWANA

Appearance:

1. Special Civil Application No. 2953 of 2001

MS PJ DAVAWALA for Petitioners No. 1-4

MR PRABHAKAR UPADHYAY for MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 19/12/2001

ORAL JUDGEMENT

1. Rule. Service of Rule is waived by learned counsel Mr.Prabhakar Upadhyay for the respondent.

2. The petitioner-postal authorities have called into question in this petition the award and order of the Industrial Tribunal (Central), Vadodara in Reference (ITC) No.1 of 1997 whereby the respondent is ordered to be reinstated with 25% backwages.

3. The challenge to the impugned award was restricted to the contention that despite the admitted number of days of presence being 233 in the year preceding the termination, the Industrial Tribunal has awarded reinstatement as if the provisions of Section 25-F of the Industrial Disputes Act, 1947 (`the Act' for short) were violated. It was submitted that in the case of a daily wager, the actual presence and working of 240 days in the preceding year was necessary to invoke the provisions of Section 25-F of the Act.

4. It appears that the Tribunal has, in the impugned award, dealt with this contention of the petitioner and after following the ratio of the judgment of the Supreme Court in WORKMAN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION v. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION [AIR 1986 SC 458], it is held that the number of holidays or weekly holidays to which the respondent was entitled had to be counted as the days worked. Accordingly, the petitioner not having given any notice or notice pay and admittedly not having paid any compensation, the impugned order of reinstatement was made.

5. As for the backwages, the learned counsel appearing for the respondent, on instructions, waived the amount of backwages and agreed to modification of the award to that extent.

6. Accordingly, the petition is partly allowed and the impugned award is modified to the extent that the respondent shall not be entitled to any amount by way of backwages. The rest of the award is confirmed in light of the above discussion. It was agreed and understood that by virtue of the order of reinstatement, the status of the workman as a daily wager would stand restored and the petitioner shall immediately take the respondent on the roll of daily-wagers and provide him work in the proper order of seniority. Rule is made absolute accordingly with no order as to costs.

Sd/-

19.12.2001 (D.H.Waghela, J.)

(KMG Thilake)